THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.16978, 17217, 17226 and 22680 of 2002

07.11.2005

Between:

Bolisetty Haribabu, S/o.late Subbarao, Vijayawada

… Petitioner

AND

1. Government of Andhra Pradesh, rep. By its Secretary,

Housing, Municipal Administration and Urban Development

Department, Secretaryat, Hyderabad

And another

… Respondents

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COMMON ORDER:

In all these writ petitions, the letter/notice issued by the second respondent cancelling the allotment of second shop in favour of the petitioners in Kaleswararao General (KG) Market is challenged as illegal and arbitrary.

The fact of the matter is not in dispute. The petitioners are petty business people engaged in the business of pulses, vegetables and the like. They were originally lessees/licensees of Old Kaleswararao Market. Vijayawada Municipal Corporation (VMC) proposed to construct a new market and therefore the petitioners were asked to vacate the shops in the old market. By reason of an understanding between VMC and the petitioners and other similarly situated persons, it was agreed to allot shops to petitioners in the KG market. Accordingly in 1998-1999 the petitioners vacated the shops in the old market. On 18.11.1999, it appears that there was an understanding between the Commissioner and shop owners including the petitioners for allotment of a shop without goodwill and without conducting any auction. The petitioners were accordingly allotted various shops in new KG market on payment of concessional goodwill amount of about Rs.35,000/- to Rs.40,000/-. However, it appears that each of the petitioners was allotted two shops instead of one shop. About 210 lessees in the old market were allotted shops in the new KG market. All the petitioners herein took possession of the shops in KG market at the relevant time for doing business. The second respondent issued the impugned letter/notice as per the decision of the VMC.

In the counter affidavit filed on behalf of VMC, it is stated that the old leaseholders vacated the shops when VMC promised to allot a shop in the new market after completion of the shops. However, the shops were allotted in the new market at

concessional goodwill and concessional rates. It is further revealed that when the remaining shops were put to auction, each shop fetched Rs.3,67,000/- whereas the petitioners and other leaseholders of old shops were allotted on the goodwill amount of Rs.35,600/-, Rs.40,000/- or Rs.63,500/- depending upon the area of each shop. It is further stated that subsequently a decision was taken, giving liberty to the petitioners to retain one shop out of two shops allotted, cancelling the allotment of second shop.

Learned Standing Counsel for VMC has also produced relevant files. A perusal of the file would show that the Council of VMC, by resolution dated 14.8.2001, constituted an Adhoc committee with Commissioner of VMC as Convener to decide the modalities of allotting shops, goodwill amount to be fixed and the like. The Adhoc committee by resolution passed in August 2001 authorised the Commissioner to examine the feasibility of allotting two shops each to each leaseholder. Accordingly, after examining the issue on 10.8.2002, the Commissioner decided to allot only one shop to each leaseholder and to cancel the second shop. Accordingly, the petitioners were issued notices informing the same.

Learned Counsel for the petitioners, M/s. K.S.R.Murthy and V.V.L.N. Sarma, submit that it is impermissible for the Commissioner to take a policy decision either to allot one shop or two shops. Secondly, they would urge that having promised to allot shops in the new market on the principle of promissory estoppel, the Commissioner is precluded from cancelling the allotment. Lastly, they would submit that the cancellation is not supported by any notice. **Per contra**, the learned Standing Counsel for VMC, Ms.Jhansi, submits that as per the provisions of Hyderabad Municipal Corporations Act, 1955 (HMC Act) as applicable to VMC, the shops can only be leased out by conducting public auction. However, having regard to the fact that the petitioners are old leaseholders, the Council decided to allot shops to the petitioners, otherwise than on public auction, on concessional goodwill and concessional rates. If each of the leaseholder is allotted more than one shop on concessional rates, it would result in financial loss to VMC especially when in public auction, for each shop an amount of Rs.3,50,000/- fetched as goodwill. Therefore, she contends that the action of the respondents in cancelling the allotment is justified.

The petitioners were leaseholders of shops in old Kaleswararao market. When the proposal was mooted for construction of new market, a steering committee was constituted with the representatives of Kaleswararao market. In the said committee, it was agreed that without conducting any auction and without collecting goodwill, 224 leaseholders of old market would be allotted shops. Though the minutes of the meeting do not specifically point out that one leaseholder would be allotted one shop, it is possible to draw an inference that only one shop was promised. There are two reasons. It is nobody's case that the leaseholders in the old market were occupied more than one shop each. Secondly, it is admitted that if the shops were put to auction, it would fetch goodwill amount more than ten times than what is offered now. Indeed, it was agreed that no goodwill amount would be collected. It is therefore not possible to accept that VMC agreed to allot two shops without collecting any goodwill amount and agreed to get huge loss for each shop. Be that

as it is, whatever be the reason, initially VMC allotted two shops to each of the petitioners at an agreed concessional rate of goodwill. As noticed, the Council of VMC appointed Adhoc committee, which further directed the Commissioner to decide various issues including the question of allotment of more than one shop. The Commissioner, having regard to various earlier proceedings and minutes of the meeting, decided to allot only one shop. Accordingly, the impugned notice was issued giving liberty to each allottee/each of the petitioners to retain one shop and other shop was cancelled. The mistake committed by VMC earlier in allotting two shops was only rectified and in such a situation, it would be futile to contend that principles of natural justice are violated. A faint submission is made across the Bar that as the floor area of the shop/shops in the old market was more than the floor area of each shop in the new market, two shops are allotted. There is no such material is placed before this Court. In any event, such plea cannot be accepted especially because the petitioners were given a concession by VMC by incurring huge monetary loss and such monetary loss cannot be allowed to multiply only to benefit the private persons like the petitioners.

Section 148 of HMC Act empowers the Municipal Corporation to deal with the property in the manner prescribed. This Court in **Darsi Sree Rama Murthy v. Vijayawada Municipal Corporation** after considering Section 148 of HMC Act and Municipal Corporation of Hyderabad (Acquisition and Disposal of Immovable Property) Rules, 1970, held that under the relevant provisions of the Act and Rules whenever the property is disposed of by the Corporation, they shall have to be done only by public auction. The relevant observations made therein are as under.

> A welfare State as the owner of public property has no such freedom while disposing of the public property or leasing out the same. All its attempts must be to augment more revenue out of the said properties to carry on welfare activities. This can be achieved only by putting the properties for public auction. Exception to the same is it can dispose of its properties for any constitutionally recognized public purpose and to achieve the goals set out in Part IV of the Constitution. The power of discretion of Commissioner or Standing Committee in granting lease must be confined and structured by rational, relevant, non-discriminatory standard or norms and it should not be arbitrary. If it departs from such standards or norms, the action would be liable to struck down. The power which is vested in the Commissioner to lease out the property otherwise than by open auction with the prior sanction of the Standing Committee under Sec.148(2) will be only to lease out the property in exceptional cases as referred above i.e., to encourage Small Scale Industries, to encourage self employment or societies which require concession to advance social objects; but when he wants to lease out the business premises for private individuals it shall be leased out only by way of public auction but not otherwise. It must follow as a necessary corollary that Commissioner/Standing Committee cannot act in a manner which would benefit a private party at the cost of Municipal Corporation. 'Ceaser's wife should be above suspicion'.

In this case, VMC allotted shops to the petitioners by a method otherwise than public auction. Having regard to the fact that the petitioners vacated the old market enabling the construction of new market complex, such an allotment may be

justified. It does not however mean that such concession should be extended to such an extent enabling the petitioners to get more monetary benefit than required. As rightly pointed out by the learned Standing Counsel for VMC, if only the second shop of each of the petitioner is again put to public auction, it would fetch more amounts, which would subserve public interest. Allowing the petitioners to retain the second shop, which in law they were not entitled to, would subvert public interest. Therefore, VMC was justified in issuing the impugned notice/letter.

It is strenuously contended by the learned Counsel for the petitioners that there is no decision taken by the Council. This submission is misconceived. As noticed herein above, the Council appointed an Adhoc committee, which directed the Commissioner to take a decisionin the matter. The decision was taken with the authority of the Adhoc committee and Council to cancel the second shop. Therefore, a policy was in place, which was intended to be adopted in respect of others. Unless such a policy is shown to be arbitrary or illegal, ordinarily, a policy decision cannot be interfered with.

If any of the writ petitioner wants to retain the second shop in respect of which allotment is now cancelled, it shall be open to make a representation to VMC, in which event, it is for VMC to consider the same in accordance with law and pass appropriate orders. In these writ petitions, the petitioners are not entitled to any relief.

In the result, for the above reasons, the writ petitions are dismissed. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

November 07, 2005.

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